

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

116

No. 2263

DORIS WILHELMINA SMITH

Appellant

vs.

JOHN W. MACY, JR., Chairman

LUDWIG J. ANDOLSEK, Vice Chairman

ROBERT HAMPTON, as member of The United
States Civil Service Commission

and

OLLINE MAE GASTON SMITH

Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 2 1969

GEORGE H. WINDSOR
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Washington, D. C. 20004

Attorney for Appellant

Of Counsel: *Nathan J. Paulson*

Cobb, Howard, Hayes & Windsor

(i)

QUESTION PRESENTED

Whether the de facto wife of a deceased government employee is entitled to survivor's benefits under 5 U.S.C. 8301 as his "widow" where they had gone through a marriage ceremony, lived openly and notoriously as husband and wife, had three children by their marriage, and where the deceased employee had designated her to be the beneficiary on his application for the benefits, and the only impediment to their valid marriage was a prior undissolved marriage, the parties to said prior marriage having separated 29 years prior to the employee's death.

This case has never previously been in this Court under this title or any other title.

(ii)

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STATEMENT OF THE CASE

In October, 1942, Robert Smith went through a marriage ceremony with the appellant herein, Doris Wilhelmina Anderson, in the District of Columbia.

Appellant, Doris Wilhelmina Anderson did not know of any impediment to a valid marriage with Robert Smith.

From October, 1942 up until the time of his death, Robert Smith lived with the appellant, Doris Wilhelmina Smith, as husband and wife, openly and notoriously. In all respects they conducted themselves as husband and wife and were known as such in the community in which they lived. Children were born of the union of Robert Smith and appellant, Doris Wilhelmina Smith as follows: Doris Yvonne Smith, born October 13, 1943; Robert Smith, Jr., born December 13, 1949; Johnny Lee Smith, born January 31, 1952; and Linda Laverne Smith, born December 23, 1953. Appellant, Doris Wilhelmina Smith, was financially dependent upon Robert Smith and was supported by him.

In October, 1964, Robert Smith applied for disability retirement from the Civil Service System. In his application he referred to appellant, Doris Wilhelmina Smith, as his wife, and by designation indicated his intention that upon his death

she should receive an annuity with the full survivor benefit resulting from deductions from his pay.

Robert Smith died November 24, 1964.

After Robert Smith's death, appellant, Doris Wilhelmina Smith applied to the appellee, Civil Service Commission, for the above mentioned surviving widow's benefits. Appellant was granted annuity payments, as were her children.

Thereafter, appellee, Ollie Mae Gaston Smith, also applied for these surviving widow's benefits, setting forth proof of a prior marriage to Robert Smith on December 24, 1926. There were no children of this marriage. Robert Smith and Ollie Mae Gaston Smith separated around the year 1935, and have not lived together since.

Said Ollie Mae Gaston Smith, in 1949, commenced Civil Action No. 2921-49 in the United States District Court for the District of Columbia seeking separate maintenance from Robert Smith. The defendant therein, Robert Smith, interposed a defense to the claim for maintenance based on marital misconduct on the part of plaintiff. On February 2, 1950, the United States District Court for the District of Columbia after a trial on the merits at which both the plaintiff and

the defendant testified, entered an order dismissing the plaintiff's claim for maintenance with prejudice.

After the aforementioned application of appellee, Ollie Mae Gaston Smith, appellee United States Civil Service Commission suspended appellant, Doris Wilhelmina Smith's annuity payments, but payments for her children were continued.

Appellant, Doris Wilhelmina Smith, after having exhausted her administrative remedies, filed this action in the United States District Court for the District of Columbia for declaratory relief and mandatory allowance of her claim for benefits under the Civil Service Retirement Act.

Upon consideration of the motions for summary judgment of the plaintiff below, Doris Wilhelmina Smith, and defendants below, John W. Macy, et al., and Ollie Mae Gaston Smith, the Court granted summary judgment in favor of the defendants. Appellant herein, Doris Wilhelmina Smith appeals from this judgment.

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ARGUMENT

I. The term "widow" in 5 U.S.C. 3301 should not be so strictly construed as to exclude appellant, who was the de facto and equitable wife of the deceased.

In *Brantly v. Skeens*, 105 App. D. C. 246, 266 F2d 447 (1959), this Court held that the Federal Employees Group Life Insurance Act (now United States Code, Title 5, sections 3701, et seq.) providing benefits to "children", includes illegitimate children of a father. Note that an illegitimate child is not a child within the meaning of the inheritance statutes. Just as a de facto child is a legal child, despite the impediment of a father not being married to the mother, so a de facto wife is a wife, despite the purely technical impediment of a prior undissolved marriage.

Similarly, in United States of America v. Phillipine National Bank, etc., 110 App. D.C. 250, 292 F2d 743 (1961), this Court held that an illegitimate child is the child of a serviceman within the meaning of the National Service Life Insurance Act.

This Court has given equitable meaning to the term wife in a decision under the common law. Where property is conveyed to a man and a woman designated as his wife, as tenants by

entities, such a conveyance creates a right of survivorship in the "wife" under the common law. Where there is a prior undissolved marriage which operates as an impediment to a valid marriage, the term wife is construed as being broad enough to include an equitable wife, who is given an interest in the property and a right of survivorship. Coleman Etc. v. Jackson, etc., et al., 109 App. D. C. 242, 206 F2d 9. (1960)

And the United States District Court for the District of Columbia, in Metropolitan Life Insurance Company v. Arenar Dixon, et al., C.A. 507-64, held that a woman who was the de facto wife of a deceased employee but who had a technical impediment to a valid common law marriage in a prior undissolved marriage, was a widow, within the meaning of the Federal Employees Group Life Insurance Act. This case, albeit a District Court decision, is consistent with the decisions of this Court. There are no contrary decisions known to counsel for appellant.

Upon the basis of these decisions, and in the best interests of justice, appellant clearly falls within the category of persons the statute is intended to benefit.

Furthermore, the intent of the deceased employee should not be overlooked. The fact that the deceased employee

designated appellant as beneficiary and referred to her as his wife on his application form for benefits indicates a clear intent and desire that she receive the benefits after his death. The importance of the intent and will of the deceased employee is bolstered by the fact that a portion of these benefits were deducted from his pay. Should not the fruits of the deceased's labor be disposed of according to his will and intent?

II. The question of Appellee's support from the deceased employee is res adjudicata

If it was the plaintiff-appellant's own prior undissolved marriage which was a technical impediment to her claim to being a widow, which is not the case, there would be no problem in allowing her claim, on the authority of the cases above cited.

The claim of appellee, Ollie Mae Gaston Smith, as a competing widow cannot be asserted by her, inasmuch as she is estopped from asserting it.

As a matter of law, she had no right to support from the deceased employee, inasmuch as her suit for maintenance had been dismissed with prejudice. It was thus res adjudicata,

as between appellee and the deceased employee and his privies.

It goes without saying that the Civil Service Act provides to dependent wives a benefit as a substitute for the support which they were receiving from the deceased husband.

To permit Ollie Mae Gaston Smith to prevail over Doris Wilhelmina Smith would defeat, rather than advance, the clear cut intention of the statute.

CONCLUSION

The judgment of the District Court granting summary judgment to the defendant-appellees should be reversed because plaintiff appellant as the de facto and equitable wife of the deceased employee, and according to the intent and designation of said deceased employee, clearly falls within the category of persons intended to be benefited by Title 5, United States Code, sections 8301 et seq.

Respectfully submitted,

COBB, HOWARD, HAYES & WINDSOR
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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SETS AND SUBSETS

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ROBERT E. BURTON, Chairman of the
Civil Service Commission et al.

Appellées

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

APPEAL FOR THE APPROVAL OF THE SERVICE COMMISSION

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,638

DORIS WILHELMINA SMITH,

Appellant

v.

ROBERT E. HAMPTON, Chairman of the
Civil Service Commission, et al.,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE APPELLEE CIVIL SERVICE COMMISSION

STATEMENT OF ISSUES PRESENTED */

Whether the district court correctly refused to upset
the administrative determination by the United States Civil
Service Commission that Ollie Mae Gaston Smith was the legal
wife of Robert Smith at the time of his death and hence entitled
to survivor annuity payments under the Civil Service Retirement
Act.

STATEMENT OF THE CASE

Doris Wilhelmina Smith, appellant herein, instituted this
action in the district court on April 24, 1967, to compel the

*/ This action has not previously been before this Court.

appellee Commission to pay to her, rather than to Ollie Mae Gaston Smith, survivor annuity payments under the Civil Service Retirement Act, following the death of her alleged husband Robert. Also joined as a defendant was Ollie Mae Gaston Smith, to whom the Civil Service Commission had awarded the annuity benefits in question. The district court granted summary judgment for the defendant-appellees.

The facts involved are outlined below:

Robert Smith in 1926 had married Ollie Mae Gaston Smith in Gaffney, South Carolina. Following their 1935 separation Mr. Smith moved to the District where, in 1942, he went through a ceremonial marriage with Doris Wilhelmina Smith. No action for divorce had been previously filed, but in 1949 Ollie instituted proceedings for divorce, ending in 1951 in a dismissal of her complaint with prejudice. There were no further attempts by either Ollie or Robert to terminate their 1926 marriage.

Mr. Smith retired from government employment on November 13, 1964, for reasons of ill-health. Eleven days later he died, and the Civil Service Commission instituted payment of survivor annuity benefits to Doris, as his widow, and to the four children.

The payments to Doris were suspended in June of 1964, when the Commission was apprised of Robert's earlier, undissolved marriage to Ollie. Final administrative determination by the Civil Service Commission of this matter occurred in March,

1967 at which time Ollie was declared entitled to full widow payments under the surviving wife provisions of the Civil Service Retirement Act. Commencement of this action in the district court followed. And, as noted, the district court granted summary judgment for the defendant-appellees.

STATUTES INVOLVED

The Civil Service Retirement Act of 1930, as amended, 5 U.S.C. §8341, provides in pertinent part:

(a)(1) "widow" means the surviving wife of an employee or member who--

(A) was married to him for at least 2 years immediately before his death. . . .

The D.C. Code provides in pertinent part at Title 30, §101:

The following marriages are prohibited in the District of Columbia and shall be absolutely void ab initio, without being so decreed, and their nullity may be shown in any collateral proceedings, namely: . . .

Third. The marriage of any person either of whom has been previously married and whose previous marriage has not been terminated by death or a decree of divorce.

ARGUMENT

Introduction and Summary

The main thrust of appellant's argument is that equitable considerations should have led the Commission to award payments to her as Robert's "de facto" (e.g., App. 4) wife. But, as we

show below, there is no statutory warrant for such an award; the statutory reference to a "widow" obviously means the surviving legal wife of the employee. Moreover, the Civil Service Commission, which has the statutory responsibility for deciding these questions, determined that Ollie, rather than Doris, was entitled to widow's benefits. Since that determination was a rational one, and finds support in the record, it was properly sustained by the district court.

Finally, we note that no different result is called for notwithstanding the 1951 dismissal of Ollie's action with prejudice.

A. The Civil Service Commission Correctly Ruled That Doris Was Not Robert's Widow Within the Meaning of the Statute.

The scope of judicial review of an agency decision--where the question is one involving the application of law to facts--is limited. N.L.R.B. v. United Insurance Co., 390 U.S. 254, 260; International Packers, Ltd. v. Federal Maritime Comm., 356 F. 2d 808 (C.A.D.C.). Where, as here, the problem involved concerns a statute continually applied and interpreted by the administrative agency involved, the scope of review is even narrower. Bamberger v. Clark, 390 F. 2d 485 (C.A.D.C.). The court to uphold such an administrative decision need only find a "warrant in the record" and a reasonable basis in law. Washington Public Power Supply Sys. v. Federal Power Comm., 358 F. 2d 808 (C.A.D.C.).

There can be no doubt in the present case, that the challenged award of widow benefits to Ollie does have a

reasonable basis in the law and is fully warranted by the record. Certainly, the view that a widow, to qualify for benefits, must have been a lawful wife, is entirely reasonable. And there was, in fact, conclusive evidence that Ollie was still Robert's legal wife when he went through a marriage ceremony with Doris.

Annuity benefits under the Civil Service Retirement Act are payable to the surviving widow of a deceased government employee. 5 U.S.C. 8341(b). The Act further defines "widow" as "mean[ing] the surviving wife of an employee" 5 U.S.C. 8341(a).

Since Doris and Robert were "married" in the District of Columbia, the law of that jurisdiction determines the validity of Doris' "marriage" and her status as a "wife". It is clear that under District of Columbia law the marriage is void ab initio. The District of Columbia Code expressly provides at Title 30, §101:

The following marriages are prohibited in the District of Columbia and shall be absolutely void ab initio, without being so decreed, and their nullity may be shown in any collateral proceedings, namely: . . .

Third. The marriage of any person either of whom had been previously married and whose previous marriage has not been terminated by death or a decree of divorce.

Since Doris could not become Robert's wife, because of his outstanding, undissolved marriage to Ollie, it follows that the Civil Service Commission correctly denied Doris the contested benefits.

B. Res Judicata Does Not Bar Ollie's Claim to
the Annuity Payments.

Appellant's assertion (App. 6) that res judicata bars this action stems from a misconception of the doctrine. While the dismissal of Ollie's suit with prejudice would have barred a later action by her on the same facts against Robert for separate maintenance, it in no way precluded the Civil Service Commission award of annuity benefits to her as Robert's widow. The Government was neither a party, nor a privy thereto, to the initial proceeding. Moreover, the issue decided therein--separate maintenance--bears no relevance to the issue in the Retirement Act proceedings.

CONCLUSION

For the reasons stated, the judgment of the district court should be affirmed.

WILLIAM D. RUCKELSHAUS,
Assistant Attorney General,

THOMAS A. FLANNERY,
United States Attorney,

MORTON HOLLANDER,
CARY BOYDEN,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

AUGUST 1969



102-22-635

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DOBBS, ET AL. V. CIVIL SERVICE COMMISSION

DOBBS

ROBERT E. BANNARD, Commissioner of the
Civil Service Commission, et al.

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE APPELLEE: CIVIL SERVICE COMMISSION

WILLIAM D. BURKE, SECRETARY
CIVIL SERVICE COMMISSION, General

ROBERT E. BANNARD, Commissioner

JOHN R. FOLANDER, Attorney

DOBBS

WILLIAM D. BURKE, SECRETARY

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Civil Service Commission, et al.,

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BRIEF FOR THE APPELLEE CIVIL SERVICE COMMISSION

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STATUTES INVOLVED

The Civil Service Retirement Act of 1930, as amended, 5 U.S.C. §8341, provides in pertinent part:

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Annuity benefits under the Civil Service Retirement Act are payable to the surviving widow of a deceased government employee. 5 U.S.C. 8341(b). The Act further defines "widow" as "mean[ing] the surviving wife of an employee" 5 U.S.C. 8341(a).

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Since Doris could not become Robert's wife, because of his outstanding, undissolved marriage to Ollie, it follows that the Civil Service Commission correctly denied Doris the contested benefits.

B. Res Judicata Does Not Bar Ollie's Claim to the Annuity Payments.

Appellant's assertion (App. 6) that res judicata bars this action stems from a misconception of the doctrine. While the dismissal of Ollie's suit with prejudice would have barred a later action by her on the same facts against Robert for separate maintenance, it in no way precluded the Civil Service Commission award of annuity benefits to her as Robert's widow. The Government was neither a party, nor a privy thereto, to the initial proceeding. Moreover, the issue decided therein--separate maintenance--bears no relevance to the issue in the Retirement Act proceedings.

CONCLUSION

For the reasons stated, the judgment of the district court should be affirmed.

WILLIAM D. RUCKELSHAUS,
Assistant Attorney General,

THOMAS A. FLANNERY,
United States Attorney,

MORTON HOLLANDER,
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Washington, D.C. 20530.

AUGUST 1969



IN THE
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FOR THE DISTRICT OF COLUMBIA CIRCUIT

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DORIS WILHELMINA SMITH,

Appellant

v.

JOHN W. MACY, JR., Chairman,
LUDWIG J. ANDOLSEK, Vice Chairman,
ROBERT HAMPTON, Member,
United States Civil Service Commission
and
OLLIE MAE GASTON SMITH,

Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE, OLLIE MAE GASTON SMITH

United States Court of Appeals

for the District of Columbia Circuit HARRY L. RYAN, JR.

FILED

MAY 1 4 1969

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Washington, D. C. 20005

Attorney for Appellee,
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(i)

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,638

DORIS WILHELMINA SMITH,

Appellant

v.

JOHN W. MACY, JR., Chairman,
LUDWIG J. ANDOLSEK, Vice Chairman,
ROBERT HAMPTON, Member,
United States Civil Service Commission
and
OLLIE MAE GASTON SMITH,

Appellees

*APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEE, OLLIE MAE GASTON SMITH

ISSUE PRESENTED

Upon determination by the Board of Appeals and Review of the United States Civil Service Commission of an appeal from a decision of the Commission's Bureau of Retirement and Insurance, which appeal and decision each found upon satisfactory evidence that

appellee, Ollie Mae Gaston Smith, was the legally surviving "widow" of Robert Smith, deceased, and as such "widow", was entitled to the surviving widow's annuity benefits provided under 5 U.S.C. § 8341; may one claiming to have been decedent's "de facto" wife at the time of his demise, through appeal to the United States District Court for the District of Columbia, upset such administrative determinations and recover the annuity benefits provided for the surviving "widow"?

This case has never previously been before this Court under this or any other title.

STATEMENT OF THE CASE

Robert Smith, a retired employee of the District of Columbia, died on November 24, 1964.

At the time of his death Survivor Annuities were provided under 5 U.S.C. § 8341 for the benefit of his surviving "widow", and children.

Appellant, Doris Wilhelmina Smith, applied for such benefits for herself and children, claiming for herself as the "surviving widow". Appellee, Ollie Mae Gaston Smith, likewise applied, claiming for herself as the "surviving widow".

Title 5 U.S.C. § 8341, provides as follows:

"SURVIVOR ANNUITIES

- (a) For the purpose of this section—
 - (1) 'Widow' means the surviving wife of an Employee or Member who—
 - (A) Was married to him for at least two years immediately before his death * * *"

From the evidence produced before it and in determination of its appeal, the Board of Appeals and Review of the United States

Civil Service Commission on March 23, 1967 (CSF-579-794 in Exhibit File lodged herein) found that the appellee, Ollie Mae Gaston Smith, was legally married to the decedent on December 24, 1926 at Gaffney, South Carolina, and was at no time subsequent thereto divorced from him.

Such evidence was considered by that Board to rebut the presumption that appellant's "marriage" to the decedent on October 19, 1942, was a valid one. In this connection, the Board also considered the so-called equitable and good conscience representations then and now being made by appellant, but concluded that it was bound by the Retirement Act, 5 U.S.C. § 8341, *supra*, and found against appellant and in favor of appellee upon her "widow's" claim. No contest was made as to the childrens' claims, and the same were honored and remained effective.

After the foregoing adverse determination of appellant's claim as widow was made by the Civil Service Commission, she instituted action in the United States District Court for the District of Columbia asking therein that she nevertheless be declared to be the "widow" of Robert Smith, and as such entitled to the survivor's annuity benefits provided by the aforesaid Civil Service Retirement Act, and that such be paid to her. She further claimed that because a suit filed against her late purported husband in 1949 by appellee for support and maintenance was dismissed, that appellee's claim as surviving widow to her late husband's retirement benefits became *res judicata*.

Upon motions for summary judgment made by all parties, the court below found that there was a rational basis for the conclusion of the Civil Service Commission that appellee, Ollie Mae Gaston Smith, was the surviving widow and became entitled to the survivor annuity benefits, and based upon such finding, granted appellee's motion and denied that of appellant. This appeal followed.

ARGUMENT

Appellant argues that the term widow as used in the Retirement Act should not be so strictly construed as to exclude appellant as a *de facto* and equitable wife of the decedent. Her argument as to this is that illegitimate children are protected as to benefits under the predecessor statute and if illegitimate children are protected, an illegitimate wife should likewise be so protected.

The fallacy of this argument is evident from a reading of the statute itself, for therein provision is made for illegitimate children under certain guidelines set forth in the statute. (Section (4))

It is further noted that in *Coleman v. Jackson*, 109 U.S. App. D.C. 242, 286 F.2d 98, cited and relied upon by appellant, this Court, while for reasons undoubtedly sufficient to establish a joint and survivor ownership in real estate as to which title had erroneously been taken as tenants by the entirety, nevertheless declined to support such determination upon a "husband and wife status". Appellee submits that *such a status*, lawful and valid in fact, is essential to the allowance provided under the pertinent statute.

In support of her position herein, appellee, Ollie Mae Gaston Smith, asserts that her prior marriage to Robert Smith was proven, as was its continued existence without any decree of divorce dissolving that marriage at any time prior to Robert Smith's death. As to this, appellant has argued that because this appellee sued the decedent in 1949 for support and maintenance which action was dismissed with prejudice, that such dismissal bars her now from a surviving widow's benefits under the Retirement Act, claiming that the Act provides for "*dependent* wives a benefit as a substitute for the support which they were receiving from" their deceased husband.

The Act does not in any manner condition the benefits which a widow is to receive *dependent upon any support which she may have been receiving from her husband*.

Appellee's action in 1949, seeking only maintenance and support from her husband, left intact the status of husband and wife after its conclusion, and significantly, Robert Smith did not contest the marital status therein, or at any time thereafter, although he was then bigamously married to the appellant herein.

1. APPELLEE, OLLIE MAE GASTON SMITH, RELIES UPON THE CONTINUED EXISTENCE AND PROVEN VALIDITY OF HER MARRIAGE TO ESTABLISH HER MARITAL STATUS AND THE ABSOLUTE INVALIDITY OF THAT BETWEEN APPELLANT AND THE DECEDENT.

Title 30, Section 101, District of Columbia Code, provides in part as follows:

"PROHIBITIONS - MARRIAGES VOID AB INITIO. The following marriages are prohibited in the District of Columbia and shall be absolutely void ab initio, without being so denied, * * *

* * *

Third. The marriage of any persons either of whom shall have been previously married and whose previous marriage has not been terminated by death or a decree of divorce, * * *"

Appellant herein obtained the license under which she and Robert Smith were allegedly married. In the application therefor, she stated under oath that Robert Smith had been married once before which marriage had been terminated by the death of his first wife, appellee herein. Assuming that in 1942 when she obtained the marriage license, she did not know otherwise, it would appear most improbable that in 1949, when Ollie Mae Gaston Smith had Robert Smith in court seeking support and maintenance, appellant would not then have learned that appellee was very much alive. In any event, Robert Smith was aware of it, accepted it as a fact and at no

time saw fit to endeavor to lawfully exchange his meretricious status with appellant for a valid one, even if he had grounds so to do.

2. **ALL FACTS NECESSARY TO ESTABLISH APPELLEE, OLLIE MAE GASTON SMITH'S CLAIM TO THE SURVIVING WIDOW'S BENEFITS HAVING BEEN FOUND BY THE COMMISSION UPON A RATIONAL BASIS, AND THE SAME BEING IN ACCORDANCE WITH LAW, THE ACTION OF THE COURT BELOW IN DENYING APPELLANT'S MOTION FOR SUMMARY JUDGMENT, AND GRANTING APPELLEE'S WAS CORRECT.**

It is abundantly clear beyond any dispute herein that all pertinent facts surrounding the marriage of appellee to the decedent, as well as that of appellant to him, were before the Civil Service Commission and were knowledgeably considered and weighed by it in relation to the pertinent law governing the same.

No useful purpose would be served by any further repetition of the facts, or the governing statutes. From any consideration thereof, this appeal would appear unquestionably to be one wherein this Court should determine from the record that there was uncontradicted evidence to support the Commission's factual determination of the matter, thereby affording, as the District Court found, a "rational basis" for the Commission's conclusions, valid law for its legal conclusions and should therefore affirm. *Pelicone v. Hodes*, 116 U.S. App. D.C. 32, 320 F.2d 754; *Eustace v. Day*, 114 U.S. App. D.C. 242, 314 F.2d 247.

Indeed it would appear that the Court has no alternative but to affirm upon this appeal, since its power to review administrative agency findings is at best limited to reviewing claims of arbitrary or capricious action of the agency in its proceedings, and no such claim has been herein even asserted.

As this Court said in *Deutsch v. AEC*, 401 F.2d 404,

"We are therefore confronted at the very threshold of this case with the ever-recurring question of the scope and extent of our authority to set aside the ruling of an administrative agency. Despite our daily diet of challenges to administrative agency actions and our resulting repeated efforts to articulate the limits of judicial review of such actions we nevertheless are continually called upon to substitute our judgment on factual issues for that of the agency charged by Congress with the initial responsibility of making, evaluating and acting upon those facts. It is well settled that the fact-finding function is within the exclusive province of the administrative agency. (Cases cited.) We appear unable to establish a substantial recognition at the Bar that '[t]he judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body.' *Rochester Telephone Corp. v. United States*, 307 U.S. 125 at 146 (1939)."

CONCLUSION

There is no dispute concerning any material fact which was determined by the Civil Service Commission upon appellant's and appellee's claims to have been the surviving widow of Robert Smith, and its determination that appellee was such in accordance with law. The finding by the court below, therefore, that such conclusion was upon a rational basis was likewise correct and in accordance with law, and accordingly, the court's action granting appellee's summary judg-

ment dismissing plaintiff's complaint and denying relief to appellant by denying her motion should now be affirmed.

Respectfully submitted,

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